State of Utah

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DAQ-008-06

M E M O R A N D U M

TO: Air Quality Board

THROUGH: Richard Sprott, Executive Secretary

FROM: Colleen Delaney, Environmental Scientist
Jim Schubach, Environmental Engineer

DATE: February 24, 2006

SUBJECT: Final Adoption: Repeal and Re-enact "R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD)"; Amend R307-110-9 and State Implementation Plan Section VIII, Prevention of Significant Deterioration.

On November 2, 2005, the Board proposed changes to R307-405, *Permits: Major Sources in Attainment or Unclassified Areas (PSD),* and State Implementation Plan Section VIII, *Prevention of Significant Deterioration.* A 45-day public comment period was held, and a public hearing was conducted on December 14, 2005. A summary of comments received by UDAQ and the staff response is attached to this memo.

Recommendations: UDAQ recommends that the Board adopt R307-405, State Implementation Plan Section VIII, and R307-110-9 with the changes that are described in the response to comments (see attached revisions to R307-405).

NSR REFORM RULE - COMMENTS AND RESPONES R307-405
(Unless otherwise noted, all comments are from a letter signed by the following: American Association of University Women, Utah Friends of Great Salt Lake, Grand Canyon Trust, Heal Utah, League of Women Voters of Salt Lake, League of Women Voters of Utah, Rocky Mountain Office of Environmental Defense, Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club, Utah Progressive Network, Wasatch Clean Air Coalition, Western Resource Advocates, Jane Bowman, M.D., Louis Borgenicht, M.D., Zell A. McGee, M.D. October 31, 2005)

1. **The NSR Reform rule will allow many more modifications at existing major sources than under the current NSR rules.**

   Response: UDAQ has evaluated the air quality impact of the NSR Reform provisions in Utah. The major source permitting requirements in attainment areas (the PSD permitting program) are only a portion of Utah's overall permitting requirements, and the effect of the NSR Reform provisions must be viewed in the context of the entire program.

   A review of the PSD permits that have been issued in recent years shows that all of these permits were either for new sources that would not be affected by the rule, or were for big modifications that would be subject to the PSD program under both the new and the old rules. UDAQ has not identified any past PSD projects that would not have been subject to PSD under the new NSR reform provisions.

   If a modification that would have required PSD review is no longer subject to those provisions because of the changes to applicability under NSR Reform, UDAQ does not believe that emission increases will occur. Utah requires all sources, both major and minor, to apply best available control technology (BACT) when an emission unit is modified. Therefore, even when a modification is not considered a major modification, the source must still apply BACT. The net effect is that emissions will not change if a modification is reviewed under the minor source program rather than the PSD program.

   UDAQ analyzed 14 different scenarios to determine how a modification would be affected by the change in applicability provisions. The scenarios were chosen to focus on the types of changes that would no longer be subject to the PSD rule. The analysis looked at whether a modification would be subject to the old PSD provisions, new PSD provisions, minor source permitting program, and minor source modeling requirements. In 12 of the 14 scenarios, BACT would be required for the modification even if the modification no longer met the applicability provisions of the PSD rule. The two exceptions occurred for modifications where emissions from the source were decreasing. Under these scenarios, a modification that would formerly have been reviewed under the PSD program could be constructed without the requirement to apply BACT. This is the type of scenario where the PSD rule is currently creating a disincentive for sources to reduce emissions. UDAQ has had inquiries from a number of sources that wanted to install pollution control equipment or switch to a cleaner fuel, but chose not to continue with the project because the permitting requirements were too much of a disincentive. UDAQ believes that under these two scenarios it is more likely that the applicability changes will encourage sources

to reduce emissions, resulting in an overall emission decrease due to the adoption of the applicability provisions.

2. **The Utah state permitting rule will not ensure that emissions from existing major sources in Non-attainment areas will not increase. The Utah permitting rule does not require LAER control technology or emissions offsetting for minor modifications in non-attainment areas.**

   Response: The current rule revision is focused on the major source permitting requirements in attainment areas (PSD permitting program). The nonattainment area requirements in R307-403 have not been changed. UDAQ will evaluate the effects of NSR reform in nonattainment areas in a future rulemaking.

3. **NSR Reform rule will benefit older, grandfathered sources, allowing upgrades and life extension projects without either the installation of pollution control equipment or evaluation of air quality impacts.**

   Response: As described in the response to comment #1, the effects of NSR Reform must be viewed within the context of Utah's entire permitting program. Utah's minor source permitting program, in combination with SIP requirements in nonattainment areas, has been very effective over the last 30 years and there are very few grandfathered sources left in the state. In addition, many sources that used to qualify as major sources are now considered minor sources due to emission reductions.

   UDAQ reviewed the emission inventory, operating permits, and approval orders to estimate the number of sources in the state that are currently considered major sources under the PSD permitting program. The review focused on the attainment areas of the state because the nonattainment area provisions are not affected by the current rule change.

   UDAQ identified 29 potential major sources. Of these sources, 7 have undergone PSD review and 14 have been regulated by Utah's minor source program, SIPs, MACT standards or other requirements that have required emission limitations and emission controls. There were only 8 sources where the major emission units were grandfathered. One of these sources was a small natural-gas burning power plant, and the other 7 were natural gas compressor stations in the Uintah Basin. These sources are all relatively small, they are burning a clean fuel, and if the compressor engines were to be modified in the future it would not be possible to replace these units with similar technology because today's compressor engines are designed to be much cleaner than engines built in the 1950's or 1960's. Other states may have a large number of old, grandfathered sources, but that is not the case in Utah. As described in the response to comment #1, modifications to these grandfathered units would likely require the installation of BACT under Utah's minor source permitting program even if the modification was not considered a major modification under the PSD program.

4. **Given that the DC Court vacated two of the original 2002 programs (Clean Unit exemption and Pollution Control Projects) indicates that additional assurances are needed to show that the remaining programs do not increase emissions in Utah.**

   Response: As described in the previous comments, UDAQ analyzed the air quality impact due to the adoption of NSR reform in Utah, and concluded that the new applicability provisions would not increase emissions in Utah, and may actually decrease emissions due to the removal of current disincentives. This analysis did not consider the effects of the Clean Unit and Pollution Control Project exemptions because these provisions had already been vacated by the DC Court. UDAQ cannot comment on how removal of these two provisions would affect the national analysis of NSR Reform, but because these provisions were not included in Utah's analysis the additional assurances that have been requested have already been addressed.

5. **Given the uncertainties associated with the new rule an air quality analysis is needed to determine the impact of the new rule change on emissions in Utah.**

   Response: It is UDAQ's considered opinion that the provisions of the reform rule will not weaken the combined Federal and State NSR program in Utah. The development of the EPA's NSR rule has been a ten year process that included input from air quality experts across the country including state and local air quality agencies, advocacy groups, industry groups and the public. EPA also issued a technical analysis of the anticipated air quality impacts of the NSR rule in December of 2002 and an update in 2003. UDAQ's rule development was a two year process that included five stakeholder meetings, an NSR website to present current information on the rule development and an e-mail outreach program to inform stakeholders of the latest rule changes. As described in the previous comments, UDAQ analyzed the air quality impact due to the adoption of NSR reform in Utah, and concluded that the new applicability provisions would not increase emissions in Utah, and may actually decrease emissions due to the removal of current disincentives.

   The reform rule was finalized December 31, 2002. Ten northeastern states filed a challenge to the rule in the Court of Appeals for the District of Columbia (DC Court). The Court issued its decision June 2005 (New York v EPA). The Court found the following reform elements to be permissible interpretations of the Clean Air Act (CAA): 1. The Actual to projected actual applicability test, 2. the ten year look back period for baseline actual emissions calculations, 3. the use of the demand growth exclusion, 4. the Plant-wide applicability program and 5. the Court concluded the CAA unambiguously defines emissions increase in terms of actual emissions. The DC Court also found that all procedural challenges related to lack of notice to be without merit. Finally the Court rejected challenges to EPA's technical analysis. Based on the combined efforts of the EPA and UDAQ the Division does not anticipate negative impacts on air quality due to the NSR reform rule.

   UDAQ does not anticipate any increase in air emissions due to the reform rule and has recommended the rule to the Air Quality Board for approval. EPA Region VIII has indicated that they expect state agencies to either submit a reform rule revision by January

2, 2006 or demonstrate a good faith effort to develop a rule for adoption early in 2006. Region VIII has indicated that the consequences of not pursuing a reform package could include sanctions and eventually the promulgation of a Federal Implementation Plan (FIP). Based on the merits of the reform rule UDAQ does not see any advantage in challenging EPA on the reform rule.

6. **Utah's state permitting program will not ensure that emissions from major sources will not increase because Utah has exemptions that could allow modifications that escape major source NSR to also escape minor source NSR.**

   Response: As described in the previous comments (see comment 1), UDAQ evaluated a number of different scenarios to determine whether modifications that would no longer be subject to PSD would still be reviewed under Utah's minor source program. Utah's minor source permitting program has a number of exemptions that are located in R307-401-9 through 16. Most of these exemptions, by their nature, would only apply to minor sources. The two that could possibly apply to PSD major sources are R307-401-11, Replacement-in-kind Equipment and R307-401-12 Reduction in Air Contaminants.

   The replacement-in-kind rule is restrictive, and has been modified to contain some of the more specific language regarding eligibility that are found in the PSD rule. UDAQ has not found that this rule has been used by sources to avoid updated technology because sources have an incentive to upgrade to newer, more efficient units. In addition, older technologies are often no longer available.

   Sources that are decreasing emissions are exempted from Utah's minor source program under R307-401-12. As described in the response to comment #1, UDAQ believes that the current requirement is acting as a disincentive for sources to install pollution controls or to increase the efficiency of older emission units. The removal of the disincentive from both the PSD program and the minor source program is more likely to decrease emissions in Utah than to increase emissions.

7. **Utah's statewide permitting program does not require modeling for minor modifications to major sources to ensure compliance with the NAAQS, PSD increments, or protect Class I areas.**

   Response: R307-410-3 (renumbered to R307-410-4 in the proposal) requires modeling for new or modified sources with emissions of 40 tons/yr of SO2 or NOx, 5 tons/yr of PM10 fugitive emissions, 15 tons/yr of PM10 non-fugitive emissions, 100 tons/yr CO, or 0.6 tons/yr of lead. These levels are significantly below the 250 tons/year threshold in the PSD program for determining applicability. In addition, UDAQ has the ability to do modeling in-house if there is reason to suspect that a source would cause a violation of the NAAQS. R307-410 also requires modeling for hazardous air pollutants.

8. **The recent increases in regional pollution, in Utah, including PM 2.5, and ozone as well as the introduction of more stringent PM standards by EPA in 2006 would be**

additional information indicating the need for a Utah specific air quality impact analysis.

Response: The State of Utah adopted a SIP in 2003 to address regional haze. This SIP will ensure progress towards reducing haze that is affecting Utah's national parks. Revisions to the SIP are due in 2008 and then each 10 years after that date. The State of Utah is working with other western states to understand the regional impacts of ozone and PM2.5 and anticipates that air quality improvements on the west coast will help regional issues as well. In addition, Utah's effective minor NSR program has led to on-going emission reductions.

9. **The new rule would allow sources to use higher baseline actual levels which will result in fewer modifications triggering major NSR review.**

   Response: The current PSD rule allows a source to use a different baseline period if that is more representative of normal operations. The rule also encourages sources to either time their permit increases based on production levels, or to increase their emissions to increase their baseline emissions. The revised rule will remove these disincentives. Even more importantly, Utah's minor NSR program will still require modifications that are not considered "major modifications" to apply the best available control technology to the modified emissions unit. As shown in Utah's analysis of the air quality impact of adopting NSR reform, the combination of the PSD program with the minor NSR program will ensure that emissions will not increase even if sources are no longer subject to the PSD program.

10. **The State of Utah does not have adequate information to determine actual emissions under the ten year look back period allowed under the new baseline actual rule. The State of Utah should consider using a five year look back period rather than the ten year allowed under the new rule.**

    Response: Under the provisions of R307-405 it is the source's responsibility to demonstrate baseline emissions. UDAQ will be able to compare this information with emissions inventory submittals in most cases and resolve any discrepancies with the source. If the source is not able to adequately demonstrate emissions for the requested baseline period then the baseline period will not be acceptable. A five-year look back period will not be any easier to demonstrate than a ten-year look back period.

11. **Comment: Section 110(1) of the CAA mandates that EPA may not approve a revision to Utah's SIP if it would interfere with attainment of the NAAQS or with any other requirement of the CAA. Utah is obliged to conduct an analysis to ensure that any revisions to the NSR program will not adversely affect compliance with the CAA requirements.**

    Response: The DC Court in New York v EPA reiterated its interpretation of the CCA regarding the division of responsibilities between State regulatory agencies and EPA with respect to the NSR program. The EPA is responsible for the development of NSR rules

and programs and the State agencies are responsible of the implementation of the NSR program. The EPA is responsible for the development of NSR rules and therefore for complying with Section 110 of the CAA. The EPA mandate issued to State agencies to proceed with the reform rule is based on EPA's determination that the implementation of the new rule will not interfere with the requirements of the CAA.

While it is not the responsibility of the State of Utah to conduct an analysis to demonstrate compliance with CAA, as directed by the Utah Air Quality Board the Utah Division of Air Quality (UDAQ) studied the impact of the NSR reform rule on emissions in Utah. The Division found that the new NSR program would be as effective as the existing NSR program. It is UDAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program (see Comment 1 and 5).

12. **Comment: In the introduction to the PSD SIP it states that "In 1977, Congress added language to the Clean Air Act to prevent significant deterioration of air quality in areas where the air quality was still pristine." The word "pristine" should be changed to "unimpaired" because not all PSD areas are clean. [Wasatch Clean Air Coalition]**

    Response: UDAQ believes that the description is appropriate when describing the goals of Congress and the language has not been changed in the SIP.

13. **Comment: EPA lacked the necessary data to undertake a meaningful environmental impact analysis.**

    Response: The District of Columbia Court of Appeals (DC Court) reviewed the issue of the adequacy of EPA's NSR Reform rule environmental impact statement (EIS) in New York vs. EPA decided June 24, 2005. The court found that EPA in its original 2002 and the 2003 EIS documents had adequately responded to petitioner's allegations. The DC court found that that EPA's study was entitled to deference.

    As directed by the Utah Air Quality Board the Utah Division of Air Quality (UDAQ) studied the impact of the NSR reform rule on emissions in Utah and found that the new NSR program would be as effective as the existing NSR program and would eliminate disincentives in the existing NSR program that can hinder the modernization of sources (see Comment 1).

14. **Comment: The new rule will create State enforcement problems by not requiring upfront review of applicability determinations that could later require "after the fact enforcement" actions.**
    Response: Sources making modifications using the reform rule are required to keep records under the following three conditions:
        1. The source uses the actual to projected actual test and makes an estimate of future actual emissions.

2. The modification will not result in a significant net emissions increase.
3. The source believes that there is a "reasonable possibility" that the modification may result in significant emissions increase.

Under the existing NSR rules an applicability determination for a modification does not require any recordkeeping or reporting to regulatory agencies. The above requirements for a determination under the new rule will extend the requirements under the Federal NSR program to require both recordkeeping and reporting for applicability tests that are not significant.

In the State of Utah all applicability determinations will be reviewed under either the State or Federal NSR programs. Any source modifications that results in an emissions increase are reviewed under the State NSR program. UDAQ does not anticipate that the reform rule will allow sources to undertake modification projects without agency review.

15. **Comment: The adoption of the Reform rule will place greater burden on the UDAQ to ensure compliance with the NSR requirements.**

Response: UDAQ does not anticipate that the review of NSR permits will be significantly altered as a result of the reform rule. The existing NSR state rule requires the review of all modifications at a source that would change air emissions. The reform rule requires a State review of all source modifications that increase air emissions. UDAQ does not anticipate a significant increase in permits associated with the new rule. The processing and review of a PSD source under the existing rules is a complex undertaking that has not been changed significantly. The changes to the rule will not add to the overall requirements of a PSD review. PSD sources comprise only a small percentage of the regulated sources in Utah (see Comment 1). UDAQ does not anticipate that reform rule changes will alter compliance inspections at PSD sources or add to the number of required inspections.

16. **Comment: The State of Utah is not required to submit the NSR reform rules. Under both Section 116 of the CAA and the DC Court decision (New York vs. EPA) the State could submit the current NSR program to EPA as a replacement for the NSR Reform rule.**

Response: A number of issues that were part of the New York v EPA court challenge were not addressed by the DC Court for lack of a factual record. One of those issues was the submittal of alternative NSR standards instead of the reform rule. UDAQ does not see any advantage to resubmitting the existing NSR rule given the rule development process and technical analysis under taken by EPA and UDAQ. It is UDAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program. To resubmit the current NSR program in place of the reform rule would place the State of Utah at risk of Region VIII sanctions for no discernable reason.

17. **Comments: The State of Utah could adopt an alternative version of the NSR Reform rule based on the "model rule" menu of options prepared by STAPPA/ALAPCO.**

Response: As directed by the Utah Air Quality Board the Utah Division of Air Quality (UDAQ) studied the impact of the NSR reform rule on emissions in Utah and found that the new NSR program would be as effective as the existing NSR program. It is UDAQ's position that the new rule will improve the NSR program by eliminating disincentives in the existing rules that can discourage modernization of facilities while preserving the effectiveness of the NSR program. Given that the Reform rule will not alter the effectiveness of the NSR program and does improve the existing rule UDAQ does not intent to adopt an alternative version of the reform rule.

18. **Comment: The new rule does not require review or documentation of the actual to projected actual test. Also the DC Court remanded the record keeping provisions of the reform rule applicability test for modifications. Utah's adoption of the new rule is premature and should be postponed until EPA has responded to the DC Court.**

    Response: Sources making modifications using the reform rule are required to keep records under the following three conditions:

    1. The source uses the actual to projected actual test and makes an estimate of future actual emissions.
    2. The modification will not result in a significant net emissions increase.
    3. The source believes that there is a "reasonable possibility" that the modification may result in significant emissions increase.

    Under the existing NSR rules, an applicability determination for a modification does not require any recordkeeping or reporting. The above requirements for a determination under the new rule extend the requirements under the Federal NSR program. In the State of Utah all applicability determinations will be reviewed under either the State or Federal NSR programs. All source modifications that result in an emissions increase are reviewed under the State NSR program. Any applicability determinations using the new actual to future actual test will have to be submitted to the State under the state NSR program. The "reasonable possibility" provision has been remanded to EPA by the DC Court for clarification. It is the position of UDAQ that the NSR program can be implemented while the EPA clarifies the "reasonable possibility" provision without altering the recordkeeping requirements of the reform rule. The remand to EPA will create an incentive for sources to maintain records for all modifications that utilize the new applicability test until the rule is clarified.

19. **Comment: Future actual emissions are not federally enforceable limits.**

    Response: Sources making modifications that do not result in a significant net emissions increase are required to keep records under the conditions listed above (Comment 17). When those conditions apply, sources are required to maintain records for either 5 or 10 years depending on the type of modification undertaken. The sources are also required to

report to the appropriate regulatory agency emissions that are greater than the future actual emissions used in the applicability determination. No record keeping is required for source modifications that are not significant under the existing NSR rule. The requirements under the reform rule are an extension of NSR recordkeeping and reporting requirements. It is UDAQ's position that the recordkeeping and reporting requirements of the reform rule with regards to applicability will be equivalent to the existing NSR program and in some case will be more stringent.

20. Comments: The Plant-wide Applicability Limit (PAL) provisions lack adequate recordkeeping and reporting requirements to insure compliance.

Response: The Plant-wide Applicability Limit provision of the NSR Reform rule requires the following monitoring, recordkeeping and reporting:

1. Emissions from all emission units at the source must be monitored on a rolling 12 month schedule.
2. Source wide total emissions are reported on a rolling 12-month total for the ten year effective PAL term.
3. The terms and conditions of an approved PAL become Title V applicable requirements.
4. Under Title V an annual compliance certification, semi-annual monitoring and deviation reports are required.
5. The PAL threshold emissions value is a federally enforceable limit specified in the PAL permit.
6. The source must retain records of all required testing and monitoring data for at least five years from the date that the monitoring was done.

The monitoring, record keeping and reporting requirements above are as stringent as those required for NSR major sources under the existing rule. It is the position of UDAQ that the recordkeeping provisions in the PAL rule are adequate to insure compliance.

21. Comments: The PAL threshold limit will be inflated in two ways: the limit is calculated using the new ten year baseline actual look back period which will inflate the plant-wide threshold, and start-up and breakdown emissions can also be added to the plant-wide threshold.

Response: The existing PSD rule uses a two year look back period to determine baseline actual emissions, except if a source petitions to use a baseline period that is more representative of normal operations. The two year look back can under certain circumstances create disincentives to plant modernization. The existing rule encourages sources to either time their permit increases based on production levels, or to increase their emissions to increase their baseline emissions. The revised ten year baseline rule will remove these disincentives to postpone plant modifications. To require sources to use the existing two-year look back period for the calculation of the PAL limit would build-in the current disincentives in the PAL program. The purpose of the ten year look back period is to allow the source to base applicability determination on plant conditions that are representative of the source operations.

Startup and shutdown and malfunction (SSM) emissions under the new rule have to be added to both the baseline actual (current) and projected (future) actual calculations when the source is using the actual to projected actual test. The source will have to justify the use of SSM emissions as part of the projected actual emissions test. If the pre and post project SSM emissions are the same than the applicability test will not be affected. If the post project SSM emissions are greater than the pre project startup than the test results will be altered in favor of the source. In all cases the source will have to justify the estimated values for pre and post project emissions from SSM. In the case of a modernization project UDAQ would anticipate that SSM emissions would decrease and would require justification from the source if SSM were anticipated to increase. All State and Federal provisions regulating SSM have to be applied to the emissions estimates. It is UDAQ's position that this provision of the new rule increases the complexity for sources and DAQ but as long as the emissions are accurate for both the pre and post project emissions the PAL limit will not be inflated.

22. Comments: The PAL provisions will allow modifications to avoid NSR review.

Response: The PAL threshold value is determined by adding the EPA significance level per pollutant to the actual plant-wide emissions at a source. The emissions at the source can not be increased greater than the significance level unless that increase is offset with a corresponding decrease at the source. The procedure of offsetting project emissions is called "netting". The procedure of "netting" is allowed on a per project basis under the existing rules. The PAL provision allows netting to take place under one permit and any change at a source can be implemented as long as the net change is not greater than the significance level for that pollutant. The PAL provision will not allow changes that would not be allowed under the existing NSR provisions. The Utah State NSR permitting rule is applicable to any changes at a source. Any emission increases at a source will be reviewed under the State rule even in cases where the change is exempt from Federal NSR major source review under a PAL permit. It is UDAQ's position that the NSR Reform Rule will not allow modifications to avoid NSR review.

23. Comment: We recommend that the definition of "Air Quality Related Value" be retained because this definition is not contained in 40 CFR 52.21. [EPA]

Response: UDAQ did not intend to delete this definition – the intention was to incorporate it by reference. Because the term is not defined in 52.21, the definition will be included in R307-405. It was previously located in R307-101, but is more appropriately located in R307-405.

24. Comment: In the definition of the term "Administrator" two cites to 52.21 paragraph (y) are not needed because this section "Clean Units Comparable to BACT" is not being incorporated by reference. [EPA, Kathy Van Dame]

Response: UDAQ agrees and the references have been removed.

25. **Comment: Utah has proposed to substitute the definition of major source baseline date in 52.21(b) (14) with the definition of major source baseline date that was submitted with the PM10 Maintenance Plan. UDEQ revised the PM10 major source baseline date to the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005 for Davis, Salt Lake, Utah, and Weber Counties. EPA has previously stated that this definition may not be approvable into Utah's SIP because there is no provision in the CAA for using a different date if an area was in non-attainment status on January 6, 1975. If this definition is not revised, EPA may have to use the current SIP definitions of major source baseline date when acting on the SIP revision to incorporate the NSR Reform Rule.**

    Response: The following response to EPA's concerns was prepared when the PM_{10} SIP was adopted by the Board in July, 2005. "The Clean Air Act establishes requirements for new sources in non-attainment areas in Section 173 of the Act, and requirements for new sources in attainment areas (PSD) in section 165 of the Act. However, the Act does not specifically address the transition of areas from non-attainment into the PSD program. UDAQ does not believe that the statute intended for increment consumption or expansion to occur in an area while the area was not attaining the standard. Presumably, the majority of emission reductions that occurred at major sources in non-attainment areas will be reductions required to provide for attainment in the area. To the extent that such decreases are associated with a construction activity, if we require that these be counted as part of the increment, they would actually expand increment. This would make the increment analysis in these areas a hollow requirement, because the NAAQS would be exceeded well before the increment level was reached. UDAQ believes that it is unreasonable to interpret the Clean Air Act to require such a hollow requirement. A much more reasonable interpretation is to use the date that an area is re-designated to attainment as the new starting point, and then use the PSD program as part of the overall strategy to maintain the now 'clean air' in those areas."

26. **Comment: R307-405-18 incorporate by reference 51.166(q) (1) and (2) which provides the general public participation requirements for a SIP approved state. However, some specific public participation requirements applicable to PSD sources, such as a minimum 30-day public comment period for PSD permits, which are in the proposed R307-401-7 are not specified in 40 CFR 51.166(q). Therefore, to ensure consistency between R307-405-18 and R307-401-7 we recommend that R307-405-18 also reference, or add, the requirements for PSD sources specified in R307-401-7.**
    Response: A source that receives a PSD permit under R307-405 is also required to receive an approval order under R307-401. The approval order will include all of the elements of the PSD permit, and will operate as the umbrella permit that includes multiple NSR requirements. Therefore, a PSD source will receive an approval order that has undergone the public comment process outlined in R307-401-7 and the additional public comment process in 40 CFR 51.166(q) will also apply as required by R307-405-18.

27. **Comment: The requirements in the current R307-405-7 that contains a commitment to develop a state plan if the increment has been violated appears to have been deleted. [Kathy Van Dame]**

Response: The language in the current R307-405-7 has been moved to the SIP because it is a commitment by the State rather than a regulatory requirement. It can be found on page 5, section E of the PSD SIP. The State cannot regulate itself, but can make a commitment about what we will do if an increment is violated. Once this provision is in the federally-approved SIP then EPA can enforce this provision against the state. If we don't meet our commitment, then EPA can issue a SIP call requiring us to address the deficiency in our SIP.

28. **Comment: In R307-405-19(b) the reference to 40 CFR 70.4(b)(3)(iii) is changed to R307-415-7i. The provisions do not seem to be equivalent because R307-415-7i applies only to certain permit actions in the operating permit program. [Clean Air Coalition]**

    Response: After reviewing the provisions, UDAQ agrees with the commenter that R307-415-7i is not equivalent to 70.4(b)(3)(viii). Because this reference to Part 70 is referring to a specific provision, rather than Utah's operating permit program in general, it will be acceptable to keep the reference to Part 70 in the incorporated rule. R307-405-19(b) has been deleted from the draft rule.

29. **Comment: The reference to Administrator in 52.21(a)(2)(iii) should be changed to executive secretary. [Kathy Van Dame]**

    Response: R307-405-3(2)(d)(i) changes the term "Administrator" to executive secretary throughout the rule, except for the instances listed in R307-405-3(2)(d)(ii). Because 52.21(a)(2)(iii) is not on the list of exceptions, the reference has been changed to executive secretary.

30. **Comment: The existing language in R307-401-6 states: "The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met," while the language proposed in the new R307-401-8 deletes "if it is determined through plan review." Currently there is a document that identifies items from the engineering review that do not appear in the Approval Order, and even with that, it's hard to understand why decisions are made. I'm concerned that such documentation will not be available in the future, if DAQ management changes its policies. (Kathy Van Dame, Wasatch Clean Air Coalition)**

    Response: The language to be deleted does not govern the kind of documentation that DAQ provides. In the first place, "plan review" is an undefined term, and therefore is meaningless; currently, DAQ uses the term "engineering review," and may in the future use some other process with some other name. The end result is the same, however: the approval order is issued only if the applicant meets all the conditions specified in the rule, and the only way to show that the conditions are met is to provide documentation of the analysis and conclusions. Second, the purpose of administrative rules is for an agency to regulate entities outside itself; the rulemaking process provides an open process so that affected parties and the public can offer input. Thus it is appropriate that the rule

delineates the conditions that the applicant must meet before receiving an approval order, but it is not appropriate to include in a rule a specification of the process that DAQ uses to make its determinations.

Any agency's actions are regulated by a variety of statutes and rules, including the Clean Air Act and federal rules, the Utah Air Conservation Act, the state Administrative Procedures Act, and the state statute and rules governing rulemaking. If DAQ did not operate with open and transparent processes, EPA would not be able to delegate the NSR program to Utah, as DAQ could not show that the federally-required conditions have been met without documenting the review.

31. **Comment: The current NSR rule has worked well for new source permitting but has not been as effective for permitting plant modifications. The existing rule with respect to modifications is difficult to understand and implement. PacifiCorp views the reform rule as a first step to improve the NSR program. PacifiCorp will comment on three areas of the reform rule: 1. PacifiCorp supports the use of the actual to projected actual applicability test. Under the WEPCO rule the Federal PSD program has allowed electric utilities to use the actual test alternative since 1992. 2. PacifiCorp supports the use of the 5 year look back period to determine the baseline actual emissions at electrical generating units under the new actual to projected actual test. 3. PacifiCorp supports the Plant-wide Applicability Limit (PAL) program. The PAL program will give PacifiCorp the flexibility to implement change while installing state of the art emission controls.**

    Mid-America's purchase of PacifiCorp includes commitments to upgrades throughout our system within the next 7-8 years; in Utah alone, we will see reductions of 60% in SO_2, 34% in NO_x, and 64% in mercury. The PAL program will help PacifiCorp to efficiently complete plant modifications while maintaining air quality. (Bill Lawson, PacifiCorp)

    Response: Noted.

32. **Comment: PacifiCorp finds the existing NSR rule to be difficult to understand and susceptible to multiple interpretations. The adoption of the reform rule is the first step in a process to improve the NSR program. (PacifiCorp)**

    Response: Noted.

33. **Comment: The PAL program will allow sources with multiple emission units to establish a plant-wide emission limit for a particular emissions category rather than being required to manage individual emission limits at multiple units at a plant. This simplified approach to emission limits continues to protect the environment by ensuring that future emissions do not increase, while allowing operational flexibility at the plant. (PacifiCorp)**

    Response: Noted.

34. Comment: PacifiCorp also notes its disagreement with the comment letter dated October 31, 2005 and submitted to the Utah Air Quality Board on behalf of various organizations and individuals in opposition to the reform. The intent of the letter was to stop the rule making process from advancing, which PacifiCorp views as a counter productive approach to the reform of the NSR program. Many of the claims in the letter have already been addressed in the Federal and State rulemaking process to date. (PacifiCorp)

Response: Noted.